

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

AMERISURE MUTUAL INSURANCE COMPANY §
vs. § CIVIL ACTION NO. 21-329 §
THE TRAVELERS LLOYDS INSURANCE COMPANY §

NOTICE OF REMOVAL

TO THE HONORABLE UNITED STATES DISTRICT COURT:

Pursuant to 28 U.S.C. § 1441 and 1446, THE TRAVELERS LLOYDS INSURANCE COMPANY (“Travelers”), through its undersigned counsel and pursuant to 28 U.S.C. § 1141 and 1146, files this Notice of Removal of the captioned action, Cause No. D-1-GN-21-000954; *Amerisure Mutual Insurance Company v. The Travelers Lloyds Insurance Company*; in the 250th Judicial District of Travis County, Texas. In support of this Notice of Removal, Travelers submits the following:

1. Amerisure Mutual Insurance Company (“Amerisure”) commenced the captioned action by filing its Original Petition on March 4, 2021 (the “Petition”), for (1) declaratory judgment; (2) breach of contract; and (3) alleged violation of the Texas Insurance Code’s Prompt Payment of Claims Statute.¹ The lawsuit arises from contentions by Amerisure that its named insured Bartlett Cocke, L.P. and Bartlett Cocke General Contractors, LLC (collectively, “Bartlett Cocke”) is an additional insured under one or more commercial general liability insurance policies issued by Travelers to FTWoods Construction Services, Inc. as named insured for consecutive,

¹ Exhibit 1, Amerisure’s Original Petition.

annual policy periods beginning September 2, 2005 through September 2, 2013 (the “Travelers policies”) for the claims asserted against Bartlett Cocke in an underlying construction defect lawsuit styled *Austin Independent School District v. Bartlett Cocke General Contractors f/k/a Bartlett Cocke, L.P.*; Cause No. D-1-GN-18-005872, in the 261st Judicial District of Travis County, Texas (the “Underlying Lawsuit”). Amerisure asserts that the Travelers policies obligate Travelers to defend Bartlett Cocke in the Underlying Lawsuit as an additional insured, and Amerisure seeks a declaratory judgment that Travelers has a co-primary duty to provide a defense to Bartlett Cocke in the Underlying Lawsuit; that each insurer is obligated to fund 50% of Bartlett Cocke’s defense from the claims asserted in the Underlying Lawsuit and that Travelers is obligated to reimburse Amerisure for 50% of Bartlett Cocke’s defense costs, including attorney’s fees, expert fees, court costs, and litigation expenses, that have been paid for by Amerisure since November 13, 2018. Additionally, Amerisure seeks its attorney’s fees incurred in this matter from Travelers, along with costs of court and interest, breach of contract damages, the 18% penalty under Chapter 542 of the Texas Insurance Code, pre- and post-judgment interest, and such other and further relief to which Amerisure may be entitled whether at law or in equity. Attached to this Notice of Removal as Exhibit 1 are copies of all process, pleadings, and orders from the Travis County District Clerk.

2. Travelers was served with Citation together with the Petition on March 17, 2021. Amerisure indicated that “[it] seeks monetary relief of over \$250,000 . . .”² This removal is timely because thirty (30) days have not elapsed since any defendant was served with a summons or citation. 28 U.S.C. §1446(b)(1).

3. Removal is proper because there is complete diversity between the parties and more than \$75,000 are pleaded as damages. 28 U.S.C. §§ 1332(a); *Johnson v. Columbia Props.*

² Exhibit 1, Plaintiff’s Original Petition, p. 2

Anchorage, LP, 437 F.3d 894, 899-900 (9th Cir. 2006). Plaintiff, Amerisure, upon information and belief, is a company organized under the laws of the State of Michigan, with its principal place of business also in Michigan. Defendant, Travelers, is an unincorporated insurance association, comprised of individual underwriters, authorized to conduct business in Texas as a “Lloyds Plan” insurer under the Texas Insurance Code. For purposes of diversity jurisdiction, the citizenship of a Lloyd’s plan insurance association is determined by the citizenship of its underwriters. *Royal Ins. Co. of Am. v. Quinn-L Capital Corp.*, 3 F.3d 877, 882-83 (5th Cir. 1993); *see also State Farm Lloyds v. Peed*, No. CIV.A. 3:00CV1696-BC, 2001 WL 513427 (N.D. Tex. May 9, 2001) (“For purposes of diversity jurisdiction, a Lloyds Plan insurer is considered an ‘unincorporated association’ whose citizenship is determined solely by the citizenship of its underwriters.”). All of Travelers’ underwriters reside in and are citizens of the State of Connecticut and none of Travelers’ underwriters reside in or are citizens of the State of Texas or Michigan.³ Accordingly, Travelers is a citizen of Connecticut. Additionally, the amount in controversy exceeds \$75,000, excluding interests and costs. 28 U.S.C. § 1332(a); *Andrews v. E.E. du Pont de Nemours & Co.*, 447 F.3d 510, 514-15 (7th Cir. 2006).

4. Venue is proper in this district court under 28 U.S.C. § 1441(a) because the state court where the suit has been pending is located in this district.

5. There is complete diversity among the parties, and the amount in controversy exceeds \$75,000. For these reasons, Defendant, Travelers, asks this Court to remove the suit to the United States District Court for the Western District of Texas—Austin Division.

³ Exhibit 2, Declaration of Wendy C. Skjerven

REMOVAL PROCEDURE

6. The Clerk of the 250th District Court of Travis County, Texas has been provided notice of this removal.

7. Pursuant to Rule 81, copies of the following documents are hereby provided to the Clerk of this Court for filing in connection with this Notice of Removal:

- a. All executed process in the state court case;
- b. Pleadings asserting causes of action and all answers to such pleadings;
- c. An index of matters being filed; and
- d. A list of all counsel of record, including addresses, telephone numbers, and parties represented.

WHEREFORE, Travelers provides notice that this action is duly removed.

Respectfully submitted,

LUGENBUHL, WHEATON, PECK, RANKIN &
HUBBARD, A LAW CORPORATION

/s/ Michael W. McCoy

By: _____

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TRAVELERS LLOYDS INSURANCE
COMPANY

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Notice was served in accordance with Rule 5 of the Federal Rules of Civil Procedure on this 14th day of April, 2021, to all known counsel of record as follows:

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Via Electronic Service

/s/ Michael W. McCoy

Michael W. McCoy